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April 12, 2018

VIA ECF

The Honorable James Orenstein, U.S.M.J.
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East, Room 1227 South
Brooklyn, NY 11201

Re: *B & R Supermarket, Inc., et al. v. Visa, et al.*, Case No. 1:17-cv-02738-MKB-JO

Dear Judge Orenstein:

Pursuant to Local Civil Rule 37.3 and Section IV(A) of Your Honor's Individual Practice Rules, we write with the concurrence of all parties to respectfully request that the Court adopt the proposed amended schedule submitted herewith that, *inter alia*, reflects a forty-five-day extension of the fact discovery cut-off for specific discovery and a briefing schedule for the filing of a renewed motion for class certification. As set forth below, plaintiffs B & R Supermarket, Inc. (d/b/a Milam's Market), Grove Liquors LLC, Strouk Group LLC (d/b/a Monsieur Marcel), and Palero Food Corp. and Cagueyes Food Corp. (d/b/a Fine Fare Supermarket) (collectively, the "Plaintiffs") believe that the amended schedule is necessary and justified to address issues raised by the order Judge Brodie issued on March 14, 2018, that denied Plaintiffs' initial motion for class certification without prejudice. (Dkt. No. 644.) Plaintiffs have conferred with Defendants, and the parties have all agreed to the entry of an amended schedule with certain conditions as described herein.

The parties seek to extend the current fact discovery cut-off for forty-five (45) days from April 30, 2018, to June 14, 2018. The parties may use this forty-five-day period only to: (i) complete non-party (non-named B&R Plaintiffs or Defendants) discovery in whatever form; and (ii) complete any meet and confer and document production on the currently pending discovery requests to Defendants Visa, Discover, and American Express relating to network and acquirer data through October 2017.¹ Plaintiffs seek discovery from numerous third parties that served as acquirers and/or processors for Defendants, as well as additional transaction data from certain of the Defendants. Plaintiffs believe this discovery will enable them to address certain issues raised by Judge Brodie's order.

¹ If the Court grants the proposed extension, the parties may also agree to reasonable postponements of currently scheduled depositions in this action (where the depositions have not been cross-noticed in the related MDL 1720 action).

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After the close of the extended discovery period, Plaintiffs will have thirty (30) days to file a renewed motion for class certification. Once Plaintiffs' renewed motion for class certification is filed, the parties shall meet and confer regarding any request by Defendants for fact and expert discovery in response to the renewed motion. Defendants shall have not less than sixty (60) days to file their response to the renewed class certification motion, and Plaintiffs will file their reply within thirty (30) days thereafter.

The parties have agreed that a further meet and confer will be necessary with respect to the deadlines for expert merits reports and dispositive motions and have proposed that those dates remain "to be determined" for now. Defendants Visa and Mastercard have agreed to this condition with the understanding that the deadlines for expert merits reports should not be later than the dates in the MDL 1720 action.

Accordingly, the parties respectfully request that the Court adopt the proposed schedule agreed to by the parties that are reflected in the proposed order filed herewith.

Sincerely,

/s/ George C. Aguilar

George C. Aguilar (admitted *pro hac vice*)

Attorney for Plaintiffs

cc: All Counsel of Record (via ECF)